

P.O. Box 14300, Washington, DC 20044-4300 • p202 624-2500 • f202 628-8844

crowell & moring**FACSIMILE COVER PAGE**Date August 3, 2005To: U.S. Patent and Trademark OfficeFacsimile Telephone Number: 571-273-0299Total Number of Pages (*Includes Cover Sheet*): 7From: Herbert I. Cantor, Reg. No. 24,392Phone: 202-508-8902

Our Ref: 010746.48111RE

User ID: 1818Your Ref: US Appln No. 09/368,505Message: **COURTESY COPY**Hard Copy to Follow: ☐ Yes ☒ No

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL TO WHOM, OR ENTITY TO WHICH, IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW.

If the reader of this message is not the intended recipient or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is prohibited. If you have received this communication in error, please notify us immediately by telephone (collect), and return the original message to us at the address listed above via the U.S. Postal Service.

Thank You

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No. : 09/368,505 Confirmation No.: 5618
Applicant : Gerd BRANDHORST et al
Filed : August 5, 1999 **APPEAL NO. 2005-1900**
TC/AU : 3754
Examiner : Philippe DERAKSHANI
Docket No. : 010746.48111RE
Customer No. : 23911
Title : DEVICE FOR EMPTYING A FILM TUBE

ADDENDUM TO CONFIRMATION OF HEARING

Commissioner for Patents
P.O. box 1460
Alexandria, VA 22313-1450

Sir:

This is supplemental to the Confirmation of Hearing filed herewith.

Request to Participate Telephonically

Counsel for Appellants elects to participate in the oral hearing telephonically. The Board is respectfully requested to provide appropriate instructions. Please send the instructions to the undersigned by fax at 202-628-8844.

Clarification

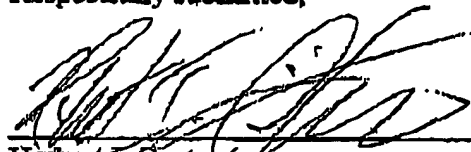
On October 8, 2003, Appellants filed a "Communication" asking the Board to remand

this case to the Examiner if the file had already been transmitted to the Board or, alternatively, asking the Examiner to reconsider the final rejection if the case had not yet been transmitted to the Board, in light of the then recently published decision and opinion in the case of *Ex parte Eggen*, 67 USPQ2d 1716 (BPAI 2003).

Since the Examiner did not comment on the Communication after the file had been lost in the PTO for some 2 ½ years, it is assumed that the paper did not make its way to the file. In order that the file be complete, a copy of the Communication (without enclosure) is submitted herewith along with a copy of the post card receipt.

Under the circumstances, and in order to expedite the appeal, the request for remand is hereby withdrawn.

Respectfully submitted,



Herbert L. Cantor
Registration No. 24,392

August 3, 2005

CROWELL & MORING LLP
P.O. Box 14300
Washington, D.C. 20044-4300
Tel.: 202-624-2605
Fax: 202-628-8844

HIC:moi

Copy to
#30
Musc.
Ltr. 35
attached
to P#34

1860/48111RE
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Gerd BRANDHORST et al.

Serial No. 09/868,505

Group Art Unit: 3754

Filed: August 5, 1999

Examiner: P. DERAKSHANI

For: DEVICE FOR EMPTYING A FILM TUBE

COMMUNICATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is supplemental to the Brief and Reply Brief filed in this case. If the file has already been transmitted to the Board, it is requested that this paper be considered a Request for Remand to the Examiner. If the file has not yet been transmitted to the Board, the Examiner is respectfully requested to reconsider the rejection in light of the following discussion.

The Board recently published a decision and opinion in the case of *Ex Parte Eggert* (Appeal No. 2001-0790, May 29, 2003) (Copy enclosed for the Examiner's convenience). In *Eggert*, the Board explained that claims of a scope falling between the scope of an issued patent claim and the scope of a rejected claim which was then amended to result in the issued patent claim would not involve recapture it is suggested that *Eggert* might be relevant to the rejection in

the instant case and should be considered by the Examiner before the Board
hears this appeal.

Respectfully submitted,



Herbert I. Cantor

Registration No. 24,892

October 8, 2003

CROWELL & MORING LLP
P.O. Box 14300
Washington, D.C. 20044-4300
Tel. 202-624-2500
Fax 202-628-8844
HIC:tcv

16
PATENT

Att'y Docket: 1060/48111RE
Serial No.: 09/368,605
Filing Date: AUGUST 5 1999

Today's Date: October 8 2003

The following has been received in the U.S. Patent & Trademark Office on the date stamped hereon:

- ☒ Communication
- ☒ Copy of Ex Parte Eggert

DUE DATE

==

HIC:tcv

CROWELL & MORING, LLP
P.O. Box 14300
WASHINGTON, D.C. 20044-4300
TEL: (202) 624-2500

BEST AVAILABLE COPY